IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

==========

JIVUBEN W/O SAKARBHAI THAVARABHAI & 3 - Appellant(s)
Versus
PURANCHANDRA MERUBHAI & 3 - Defendant(s)

==========

Appearance :

MR MEDH FOR MR. SN SOPARKAR for Appellant(s) : 1 - 4.
NOTICE SERVED for Defendant(s) : 1 - 2.
MR BHASKAR P TANNA With MS. MAHROOK N. KERRAVALA for Defendant(s) : 3 - 4.

==========

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 25/07/2006

ORAL JUDGMENT

1. By way of this appeal the appellants have challenged the judgment and award dated 27.09.1984 passed by the Motor Accident Claims Tribunal, No. IV(Main), Ahmedabad, in M.A.C.T. No. 208 of 1982 whereby the application was dismissed by the Tribunal.

2. The short facts of the case are that on 30.04.1982 the deceased was returning home by the Municipal bus plying on route No. 61/2. At about

10.15 p.m. when the bus was passing through the public road near Nagri Eye Hospital and took a sharp turn to go towards Law Garden side, the deceased wanted to get down. So he requested the original opponent no.2 to give signal to stop the bus, but the bus was not stopped. Again a request was made by the deceased to the conductor thereafter the conductor gave the signal and the bus was ultimately stopped near Rashtra Bhasha Prachar Samiti Office where there was no specified bus stop. On stopping the bus the deceased tried to get down from the bus and even before he could completely alight from the bus, the driver started the bus with a jerk whereby deceased lost balance and he was dragged along with the bus as a result of which he sustained severe injuries on the head and chest portion. Ultimately deceased succumbed to his injuries. The legal heirs of the deceased have therefore filed the claim petition claiming Rs. 1,00,000/- by way of compensation for the death of the deceased.

3. Learned advocate for the appellants submitted that Tribunal has not properly appreciated the evidence on record and committed an error in accepting the deposition

of the driver (Ex.32) and that of the Conductor (Ex. 33). He further submitted that Tribunal has erred in holding that the respondents have proved that there was contributory negligence on the part of the appellant in causing the accident.

4. As a result of hearing and perusal of the record it is found that the finding of the Tribunal is that since the deceased had requested the conductor to stop the bus, he must have gone to the rear part of the bus to tell the conductor to stop the bus and before the bus was actually stopped he must have been standing on the foot board of the rear door whereby due to the speed of the bus he must have lost his balance and he must have been thrown off the bus without any cause attributable to the driver or conductor of the bus. It was also recored that due to such fall he must have died and not because the rear wheel of the bus ran over. From the documents placed on record it shows that the applicant at the time of his untimely and unfortunate death was 19 to 20 years of age and he can be said to be sufficiently matured enough not to endanger his life. Since the applicants have lost their son I am of the opinion that the applicant Nos. 1 and 2 shall be entitled to a sum of ***Rs. 35,000/-*** but the applicant Nos. 3 and 4 shall not be entitled

for this amount.

5. In the premises aforesaid appeal is allowed to the aforesaid extent. The award of the Tribunal is quashed and set aside. No order as to costs.

(K.S.JHAVERI,J.)

Suresh*